

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 465 Firefighter Emeritus

**SPONSOR(S):** Raburn

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee		Renner	Miller
2) Government Operations & Technology Appropriations Subcommittee			
3) Government Accountability Committee			

### SUMMARY ANALYSIS

In order for a firefighter to retain/renew his or her Firefighter Certificate of Compliance (FCOC), every four years he or she must:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division;
- Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule; and
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.

The bill creates a Firefighter Emeritus classification for firefighters. The classification only applies to firefighters with more than 20 years of service. A firefighter may apply within four years after separation from active duty and the designation is valid for a four-year period.

The bill authorizes the Division of State Fire Marshall (DSFM) to impose a fee of no more than \$50 for a Firefighter Emeritus designation or for renewal of the designation. However, the DSFM may impose a different fee if the Firefighter Emeritus designation is requested by a fire service instructor I, II, or III or a certified fire safety inspector.

A Firefighter Emeritus who returns to active status, after separation from employment, must pay any licensure fees and satisfy all education requirements. Furthermore, the bill clarifies that Firefighter Emeritus cannot engage in firefighting activities with a fire department unless he or she holds a current and valid FCOC or Special Certificate of Compliance issued by the DSFM.

A Firefighter Emeritus must apply for renewal of his or her designation as a Firefighter Emeritus on a form prescribed by the DSFM. A Firefighter Emeritus is subject to a \$50 administrative fee if he or she does not renew their designation before the end of the four-year period.

The bill will have an insignificant negative fiscal impact on the Department of Financial Services for contracted resources to implement the provisions of the Bill. The bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Chapter 633, F.S., governs state law on fire prevention and control. The Chief Financial Officer is designated as the State Fire Marshal, operating through the Division of State Fire Marshall (DSFM),<sup>1</sup> and tasked with regulating fire service providers. A firefighter is defined as an individual who holds a current and valid Firefighter Certificate of Compliance (FCOC) or Special Certificate of Compliance issued by the DSFM. A FCOC is issued by the DSFM to an individual who does all of the following:<sup>2</sup>

- Satisfactorily completes the Minimum Standards Course or has satisfactorily completed training for firefighters in another state which has been determined by the division to be at least the equivalent of the training required for the Minimum Standards Course;
- Passes the Minimum Standards Course examination within 12 months after completing the required courses; and
- Possesses the qualifications in s. 633.412, F.S.

In order for a firefighter to retain/renew his or her FCOC, every 4 years he or she must:<sup>3</sup>

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division;
- Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule; and
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.

##### **Effect of Proposed Changes**

The bill creates s. 633.415, creating a Firefighter Emeritus classification for firefighters. The classification only applies to firefighters with more than 20 years of service. A firefighter may apply within four years after separation from active duty and the designation is valid for a four-year period.

The bill authorizes the DSFM to impose a fee of no more than \$50 for a Firefighter Emeritus designation or for renewal of the designation. However, the DSFM may impose a different fee if the Firefighter Emeritus designation is requested by a fire service instructor I, II, or III,<sup>4</sup> or a fire safety inspector certified pursuant to ch. 633, F.S.

A Firefighter Emeritus who returns to active status, after separation from employment, must pay any licensure fees and satisfy all education requirements. Furthermore, the bill clarifies that Firefighter Emeritus cannot engage in firefighting activities with a fire department unless he or she holds a current and valid FCOC or Special Certificate of Compliance issued by the DSFM.

A Firefighter Emeritus must apply for renewal of his or her designation as a Firefighter Emeritus on a form prescribed by the DSFM. A Firefighter Emeritus is subject to a \$50 administrative fee if he or she does not renew their designation before the end of the four-year period.

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<sup>1</sup> Section 633.104, F.S.

<sup>2</sup> Section 633.408(4), F.S.

<sup>3</sup> Section 633.414(1), F.S.

<sup>4</sup> Rule 69A-37.059, F.A.C.

Lastly, the bill authorizes the DSFM to adopt rules to administer the provisions of the bill.

**B. SECTION DIRECTORY:**

- Section 1      Creates s. 633.415, F.S., providing for a designation as a Firefighter Emeritus; providing requirements for the designation; requiring the Division of State Fire Marshal to adopt rules.
- Section 2      Provides an effective date of July 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

**2. Expenditures:**

The Department of Financial Services estimates that approximately \$12,000 in contracted resources (120 contract development hours @ \$100.00 per hour) will be required to implement the bill. Additionally, the department estimates that about 18,000 individuals would currently qualify for the emeritus classification and rough 1,200 more individuals would be eligible per year going forward.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

None.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

At line 20, the bill provides for the DSFM to choose a different fee for fire service instructors. Unlike the fee for regular applicants for emeritus status, which fees are capped at \$50, the bill provides no guidance for the fees to be charged to instructors, leaving such decision to the sole discretion of the division. To exercise this authority and set a fee, the DSFM would have to act through rulemaking.

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.<sup>5</sup> Rulemaking authority is delegated by the Legislature<sup>6</sup> by law authorizing an agency to “adopt, develop, establish, or otherwise create”<sup>7</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>8</sup> To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.<sup>9</sup> The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>10</sup> A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, could be ruled unconstitutional if it allows the agency to make the law.<sup>11</sup> Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.<sup>12</sup>

By authorizing the DSFM to decide the fee for fire service instructors without any discernable guidelines, the bill could be interpreted as an invalid delegation of legislative authority.

**B. RULE-MAKING AUTHORITY:**

The bill grants the DSFM rulemaking authority to administer the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill provides rulemaking authority to the DSFM which appears to be in addition to the existing authority provided in s. 633.104(1), F.S. To avoid unnecessary duplication, at line 37 the bill could provide for the DSFM to adopt rules pursuant to s. 633.104(1), F.S.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>5</sup> Section 120.52(16), F.S.; *Florida Dep’t of Fin. l Servs. v. Capital Collateral Reg’l Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

<sup>6</sup> *SW. Florida Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

<sup>7</sup> Section 120.52(17), F.S.

<sup>8</sup> Section 120.54(1)(a), F.S.

<sup>9</sup> Sections 120.52(8) & 120.536(1), F.S.

<sup>10</sup> *Sloban v. Florida Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Ass’n*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

<sup>11</sup> *Conner v. Joe Hatton, Inc.*, 216 So. 2d 209 (Fla.1968).

<sup>12</sup> *Sarasota County. v. Barg*, 302 So. 2d 737 (Fla. 1974).